**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2908 OF 2006

Shri Dattattryay S.Vyavahare .. Petitioner.
Vs.
Smt.Sulochana Bhika Shinde & Ors. .. Respondents.

Mr.J.N.Pawar for the petitioner.
Mr.Ramesh Dube Patil i/b M/s.Jay & Co. for respondent nos.1, 5, 7 and 8.

**CORAM : D.B.BHOSALE, J.**

**DATED : 19TH SEPTEMBER, 2006**

P.C.:

. Heard learned counsel for the petitioner and respondent nos.1, 5, 7 and 8.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Patil, learned counsel waives service for respondent nos.1, 5, 7 and 8.

3. This writ petition basically challenges the two orders dated 14.11.2003 and 2.12.2003 passed on the applications at Exhibit-116 and Exhibit-129 respectively, by which the application Exhibit-116 filed by the petitioner has been rejected whereas application at Exhibit-129 filed by the respondent-defendant has been allowed. By the

application at Exhibit-116 the petitioner had prayed for recording his cross examination on commission. He had stated in the application that about 3 years ago he suffered paralytic stroke and since then he is bed-ridden and not in a position to attend the court and offer himself for cross examination. The application was however rejected. Thereafter the respondent-defendant filed an application at Exhibit-129 seeking appropriate order in view of the fact that the plaintiff did not offer himself for cross examination. That application was allowed vide order dated 2.12.2003 holding that his examination-in-chief shall not be read in the evidence since he did not offer himself for cross examination. Thereafter the petitioner filed applications seeking review of the orders dated 14.11.2003 and 2.12.2003 and the application seeking condonation of delay in filing those applications. All the three applications, bearing Exhibit nos.197, 199 and 201, came to be rejected vide order dated 28.3.2006. That order has also been challenged in the present writ petition.

4. I heard learned counsel for the parties. I perused all the orders as also other material on record. It appears from the record that the petitioner did suffer paralytic stroke and he has been

bed-ridden since last 2-3 years. The medical certificate in support thereof had also been produced on record. The illness of the petitioner has not been disputed by the respondent-defendant before this court. Keeping that in view, all the orders impugned in the present writ petition, namely, order dated 14.11.2003, 2.12.2003 and 28.3.2006 are quashed and set aside. The application at Exhibit-116 filed by the petitioner is restored to file. The trial Court shall pass appropriate orders thereon appointing the court commissioner for recording cross examination of the petitioner-plaintiff in accordance with law. The cross examination of the plaintiff be completed as expeditiously as possible and in any case within a period of eight weeks from the date of receipt of this order. The trial Court shall thereafter proceed with hearing of the suit and dispose it of as expeditiously as possible and preferrably within a period of eight months from the date of recording of the cross examination of the plaintiff. With these observations rule is disposed of. No orders as to costs.

**(D.B.Bhosale, J.)**